

**United States Department of Labor
Employees' Compensation Appeals Board**

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Salt Lake City, UT, Employer**

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**Docket No. 16-1748
Issued: April 18, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 30, 2016 appellant filed a timely appeal from a July 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish disability for the period January 2 to April 10, 2016.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that the record contains additional evidence since the July 18, 2016 decision of OWCP. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 15, 2016 appellant, then a 44-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging low back and feet conditions due to factors of his federal employment. He indicated that he first became aware of his claimed conditions on December 31, 2015 and first realized on January 7, 2016 that they were caused or aggravated by his employment. Appellant stopped work on January 2, 2016.³

OWCP accepted that appellant sustained intervertebral disc displacement at L4-5 and L5-S1⁴ and plantar fascial fibromatosis. Appellant filed a claim for compensation (Form CA-7) for the period January 2 to 8, 2016 due to his accepted conditions. He filed additional CA-7 forms claiming disability for the period January 9 to May 13, 2016.

In a January 7, 2016 report, Dr. Javier Chavez, an attending Board-certified internist, noted that appellant reported back pain which he claimed he first noticed at work two or three months prior. He diagnosed lumbar strain and indicated that appellant could work on a full-time basis with restrictions.⁵

In a January 15, 2016 report, Dr. Daniel M. Cushman, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant presented on January 4, 2016 with complaints of severe pain and intermittent tingling in his right foot. Appellant advised that he had been working as a postal carrier for “many years.”⁶ Dr. Cushman discussed the findings of diagnostic testing and his physical examination and concluded that appellant had axial low back pain, likely discogenic, with a possible radicular component. He recommended that appellant participate in physical therapy.

In a report dated February 25, 2016, Dr. Chavez described appellant’s complaints of back and foot pain since he first noticed the symptoms at work on December 31, 2015. He noted that appellant reported that a typical workday as a city carrier assistant consisted of heavy lifting, bending, stooping, stretching, pushing and pulling heavy carts, casing mail, and standing for almost six hours a day. Appellant advised that he frequently climbed stairs and had to get in and out of his postal vehicle. Dr. Chavez reported findings of his February 25, 2016 examination noting lumbar tenderness to palpation, limited back motion, pain complaints on straight leg test, and patellar reflexes of 1+. He diagnosed lumbar herniated nucleus pulposus (HNP), lumbar radiculopathy, and bilateral plantar fasciitis and noted:

“[Appellant’s] lumbar HNP, lumbar radiculopathy, and bilateral plantar fasciitis is [sic] a direct result of his repetitive duties which he has performed daily since

³ Appellant previously filed a traumatic injury claim (Form CA-1) for a torn right calf muscle alleged to have been sustained at work on February 12, 2015, but the claim was not formally accepted for any specific condition.

⁴ The record contains a report of January 2, 2016 x-ray testing showing disc bulges at L4-5 and L5-S1.

⁵ In reports dated February 4 and March 31, 2016, Dr. Chavez diagnosed degenerative disc disease of the low back.

⁶ In a January 27, 2016 letter, an employing establishment official advised that appellant had only worked as a postal carrier for approximately 14 months before he filed the Form CA-2 on January 15, 2015, instead of for “many years” as stated to Dr. Cushman.

January 1, 2014 while working for the U.S. Postal Service as a city carrier assistant. The dynamics of his job correlate with his symptoms, therefore, he is covered for a work[-]related injury -- repetitive in nature, date of injury being December 31, 2015.”

In a duty status report (Form CA-17) dated April 7, 2016, a physician with an illegible signature diagnosed lumbar HNP and listed various work restrictions that were effective April 11, 2016.

In a June 2, 2016 letter, OWCP requested that appellant submit medical and other evidence in support of his claim for disability for the period January 2 to April 10, 2016. It advised that it would pay disability compensation beginning April 11, 2016. Appellant submitted copies of periodic treatment notes in response to OWCP’s request.

By decision dated July 18, 2016, OWCP found determined that appellant had not met his burden of proof to establish disability for the period January 2 to April 10, 2016. It found that he had failed to submit rationalized medical evidence showing disability for this period due to the accepted employment conditions. However, OWCP found that appellant had, in fact, established disability from April 11 to May 13, 2016.⁷

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁸ In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.⁹ This meaning, for brevity, is expressed as disability for work.¹⁰

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

⁷ The record reflects that appellant was paid disability compensation on the daily rolls for the period April 11 to July 22, 2016.

⁸ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ See 20 C.F.R. § 10.5(f).

¹⁰ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); see also *A.M.*, Docket No. 09-1895 (issued April 23, 2010).

¹¹ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ANALYSIS

Appellant filed claims for compensation alleging disability for the period January 2 to May 13, 2016 due to his accepted occupational diseases. In a July 18, 2016 decision, OWCP determined that he had not met his burden of proof to establish disability for the period January 2 to April 10, 2016. It found, however, that appellant had established disability for the period April 11 to May 13, 2016.

The Board finds that appellant has not met his burden of proof to establish disability for the period January 2 to April 10, 2016.

Appellant submitted a January 7, 2016 report, in which Dr. Chavez noted that he reported back pain at work two or three months prior. Dr. Chavez diagnosed lumbar strain and indicated that appellant could work on a full-time basis with restrictions. In reports dated February 4 and March 31, 2016, he diagnosed degenerative disc disease of the low back. However, the submission of this report does not support disability for the period January 2 to April 10, 2016, as Dr. Chavez did not provide any opinion as to whether disability for this period was due to the accepted conditions. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of limited probative value on the issue of causal relationship.¹²

In a report dated February 25, 2016, Dr. Chavez discussed appellant's back and foot complaints and his reported work duties as a city carrier assistant. He diagnosed lumbar HNP, lumbar radiculopathy, and bilateral plantar fasciitis and noted, "[Appellant's] lumbar HNP, lumbar radiculopathy, and bilateral plantar fasciitis is [sic] a direct result of his repetitive duties which he has performed daily since January 1, 2014 while working for the U.S. Postal Service as a city carrier assistant."

The February 25, 2016 report of Dr. Chavez is insufficient to establish appellant's claim for disability compensation for the period January 2 to April 10, 2016. First, the February 25, 2016 report does not identify a specific period of work-related disability. Second, the report does not contain a rationalized medical opinion relating appellant's disability to the accepted occupational diseases. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹³ Dr. Chavez did not describe the accepted conditions in any detail or explain how they could have caused disability during the claimed period of disability. He noted some findings on examination on February 25, 2016, such as lumbar tenderness to palpation and limited back motion, but he did not explain how these findings would support disability from work. Dr. Chavez listed some of appellant's job duties in his report, but he did not adequately explain how these job duties caused disability from work for specific periods. He indicated that the "dynamics of [appellant's] job correlate with his symptoms" and posited that, therefore, he was covered for a work-related injury, repetitive in nature, with the date of injury being December 31, 2015. Dr. Chavez did not clarify this vague statement about the "dynamics" of appellant's job.

¹² See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹³ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

In a January 15, 2016 report, Dr. Cushman indicated that appellant presented on January 4, 2016 with complaints of severe pain and intermittent tingling in his right foot. He indicated that appellant had axial low back pain, likely discogenic, with a possible radicular component. The submission of this report fails to support appellant's claim for disability compensation for the period January 2 to April 10, 2016, because Dr. Cushman did not provide any opinion that he had disability for this period due to the accepted occupational diseases.

For these reasons, the Board finds that OWCP properly denied appellant's disability claim for this period as he did not meet his burden of proof to establish disability for the period January 2 to April 10, 2016.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish disability for the period January 2 to April 10, 2016.

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board